AN ACT concerning utilities; relating to electric generating units and
carbon dioxide emission standards; concerning the department of health
and environment, submission of a state plan, requirements; amending
K.S.A. 2015 Supp. 65-3031 and repealing the existing section.

WHEREAS, The United States Environmental Protection Agency has
clearly demonstrated in regulatory language, Federal Register Preamble
discussions, written guidance and pleadings in pending litigation that the
requirements of a sufficient Initial Submittal do not include a requirement
to submit or commit to a complete or even partial state plan before
September 6, 2016; and

WHEREAS, In developing this Initial Submittal, it is in the interest of
Kansas to preserve the state's options relating to implementing the federal
emission regulations while the validity of those regulations is being
litigated in court and to not commit to any binding obligations before
being required to do so, particularly when the state is entitled to an
extension of the state plan submittal deadline; and

WHEREAS, Due to the federal enforceability of a state plan once
submitted and approved by the Environmental Protection Agency,
premature submittal of such a state plan or Initial Submittal committing to
binding obligations constitutes an abrogation of the authority of the
legislative and executive branches to control the affairs of Kansas and
effects an unconstitutional delegation of state authority to the federal
government.

Now, therefore,

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2015 Supp. 65-3031 is hereby amended to read as
follows: 65-3031. (a) In accordance with the requirements of the
environmental protection agency's rulemaking pursuant to docket EPA-
HQ-OAR-2013-0602 40 C.F.R. part 60, the secretary may develop and
submit to the environmental protection agency a state plan for compliance
with the regulation of carbon dioxide from any affected or existing electric
generating units pursuant to 42 U.S.C. § 7411.

(b) In developing an initial submittal to the environmental protection
agency pursuant to 40 C.F.R. part 60, the secretary shall:
(1) Promptly implement the required public input process required by the environmental protection agency for a state to receive a two-year extension pursuant to 40 C.F.R. 60.5765;

(2) determine whether the clean power plan implementation study committee established in K.S.A. 2015 Supp. 66-1285, and amendments thereto, meets the qualifications to conduct and oversee the public input pursuant to 40 C.F.R. 60.5765;

(3) determine whether implementation of the proposed state plan:
   (A) Requires new statutory authority be created for the department of health and environment, the state corporation commission or other relevant state agencies that would be responsible for implementing and enforcing an approved state plan;
   (B) is feasible without impairing the reliability of the electric utility service in Kansas;
   (C) is the least expensive alternative to meet the federal emissions regulations without impairing the reliability of the electric utility service in Kansas; and
   (D) would require credits to be obtained from utilities or entities outside the state of Kansas and how much such credits would likely cost the state and the average Kansas ratepayer on an annual basis.

(c) Nothing in this section shall be construed to prevent the secretary from seeking any additional extensions of time to submit a state plan regulating carbon dioxide from any affected or existing electric generating units pursuant to 42 U.S.C. § 7411.

(d) In filing an initial submittal to the environmental protection agency, the secretary shall not make any binding commitments to submit a state plan in the future or bind the state of Kansas in any way not required by the express provisions of 40 C.F.R. 60.5765.

(e) If the two-year extension request is granted by the environmental protection agency pursuant to 40 C.F.R. 60.5765, the secretary of health and environment may—establish begin developing separate standards of performance for carbon dioxide emissions based upon: (1) The best system of emission reduction that has been adequately demonstrated while considering the cost of achieving such reduction;

(2) reductions in emissions of carbon dioxide that can reasonably be achieved through measures taken at each electric generating unit; and

(3) efficiency improvements to any affected electric generating unit and other measures that can be undertaken at each electric generating unit to reduce carbon dioxide emissions without any requirements for fuel switching, co-firing with other fuels or limiting the utilization of the unit.

(3)(f) (1) In establishing any standard of performance for any existing electric generating unit pursuant to this section, the secretary may consider alternative standards and metrics or may provide alternative
compliance schedules than those provided by federal rules or regulations by evaluating: (1) (A) Unreasonable costs of achieving an emission limitation due to plant age, location or the design of an electric generating unit;

(2) (B) any unusual physical or compliance schedule difficulties or impossibility of implementing emission reduction measures;

(3) (C) the cost of applying the performance standard to an electric generating unit;

(4) (D) the remaining useful life of an electric generating unit;

(5) (E) any economic or electric transmission and distribution impacts resulting from closing the electric generating unit if compliance with the performance standard is not possible; and

(6) (F) the potential for a standard of performance relating to unit efficiency, including any requirements for a new source review or the application of a best available control technology emission limitation for any criteria pollutant as a condition of receiving a permit or authorization for the project.

(e) The secretary may implement such standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading or other alternative implementation measures that the secretary determines to be in the interest of Kansas. The secretary may enter into voluntary agreements with utilities that operate fossil fuel based electric generating units within Kansas to implement such carbon dioxide emission standards. Such agreements may aggregate the carbon dioxide emissions levels from electric resources in this state, including coal, petroleum, natural gas or renewable energy resources as defined in K.S.A. 2015 Supp. 66-1257, and amendments thereto, that are owned, operated or utilized by power purchase agreements by utilities for purposes of determining compliance with such carbon dioxide emission standards.

(2) In implementing such standards, the secretary shall not permit participation in an organized carbon emission trading market without first obtaining specific statutory authority.

(g) After filing the initial submittal and prior to finalizing a state plan or making any other commitment to the environmental protection agency relating to any requirements pursuant to 40 C.F.R. part 60, the secretary shall request the participation of the state corporation commission, all electric public and municipal utilities and electric cooperatives within Kansas and any such other persons or entities as the secretary may find necessary or helpful to assist in the development of the proposed state plan.

(h) The secretary and the state corporation commission shall enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under the Kansas air quality act.
(e) (i) (1) The secretary shall submit to the clean power plan implementation study committee:

(A) A plan to investigate, review and develop a state plan no later than the first week of November 2015;

(B) information on any final rule adopted by the environmental protection agency under docket EPA-HQ-OAR-2013-0602 no later than February 1, 2016; and

(C) any information requested by the chairperson.

(2) The state corporation commission shall submit information to the clean power plan implementation study committee concerning:

(A) Each utility's re-dispatch options along with the cost of each option;

(B) the lowest possible cost re-dispatch options on a state-wide basis; and

(C) the impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

(f) (i) The secretary shall present any proposed state plan proposed for submission to the environmental protection agency to the clean power plan implementation study committee for review and input approval pursuant to K.S.A. 2015 Supp. 66-1285, and amendments thereto, at least 30 days prior to submission of such a plan to the environmental protection agency or any other federal agency. If a proposed plan is disapproved by the clean power plan implementation study committee, the secretary shall resubmit a revised plan to the study committee. The secretary may submit any proposed plan to the environmental protection agency that has been submitted to and approved by the study committee and that has not been disapproved by the committee within 30 days of the committee receiving such proposed plan.

(f) (k) Notwithstanding review and approval by the clean power plan implementation study committee of the submission of a state plan to the environmental protection agency, further action by the secretary to implement or enforce the final approved state plan is dependent upon the final adoption of the federal emission guidelines. If the federal emission guidelines are not adopted or are adopted and subsequently suspended, vacated, in whole or in part, or held to not be in accordance with the law, the secretary shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.

(h) (l) Notwithstanding any other provision of law, prior to submitting any state plan to the environmental protection agency, the secretary shall:

(1) Submit such state plan as proposed rules and regulations pursuant to K.S.A. 77-415 et seq., and amendments thereto. Such submission shall be expedited by any agency reviewing such proposed rules and regulations pursuant to K.S.A. 77-415 et seq., and amendments thereto;
(2) request a review of the proposed state plan by the office of the attorney general. The attorney general review may certify to the secretary that the plan will not hinder, undermine or in any way harm the position of the state of Kansas in any current or pending litigation relating to the environmental protection agency docket EPA HQ OAR 2013 0602 agency's rulemaking pursuant to 40 C.F.R. part 60. The attorney general shall also review the proposed state plan concerning any impacts on the protections guaranteed by the constitutions of the United States or the state of Kansas; and

(3) not submit a state plan if the attorney general review indicates that the proposed plan would adversely impact the state's legal position in any current or pending litigation relating to the environmental protection agency docket EPA HQ OAR 2013 0602 the environmental protection agency's rulemaking pursuant 40 C.F.R. part 60 or if the attorney general review indicates that the proposed state plan adversely impacts protections guaranteed by the constitutions of the United States or the state of Kansas.

(4) (m) The secretary shall be responsible for submitting an initial submittal pursuant to 40 C.F.R. 60.5765 and, if appropriate, a state plan to the environmental protection agency in a timely manner. Notwithstanding any other provision of this act, the secretary shall prepare and submit any request for an extension of time to file a state plan, if necessary, an interim state plan or a final state plan to the environmental protection agency. Any interim or final state plan shall be submitted by the secretary no less than four calendar days prior to the federal submission deadline, or extended submission deadline, established by the environmental protection agency. Any final state plan submitted to the environmental protection agency may only be submitted if the secretary has previously submitted such plan for review and received approval by the clean power plan implementation study committee pursuant to this act.

(4) (n) This section shall be part of and supplemental to the Kansas air quality act.

Sec. 2. K.S.A. 2015 Supp. 65-3031 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.